

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1977

No. 77-1783

AMERICAN NATIONAL BANK,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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1. EEOC contends that because the court of appeals remanded this case to the district court, review of the case at this time is inappropriate. (EEOC Brief, p. 3). This Court, however, has frequently granted certiorari in other recent employment cases in which the court of appeals remanded the action for further proceedings. *United Air Lines v. Evans*, 431 U.S. 553 (1977); *Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355 (1977); *United Air Lines v. McMann*, 434 U.S. 192 (1977). Obviously, if in remanding the case the court of appeals applied the wrong standard of law, review of that ruling is "fundamental to the further conduct of the case." *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 685 (1949); *United States v. General Motors Corp.*,

323 U.S. 373, 377 (1945). To fully litigate the new claims identified by the court of appeals and subsequently to seek review in that court and again in this court places a far greater burden on the judicial system than would this Court's granting review at this time.

2. Petitioner does not contend, contrary to EEOC's suggestion (EEOC Brief, p. 4), that the Commission's standing to bring suit depends on the ultimate merits of the charging party's claim. Petitioner's argument is that where no valid charge of discrimination has ever been filed, the EEOC has no jurisdiction to proceed. Both lower courts found that evidence regarding the Holland charge has been lost and that Holland herself could not remember applying with the Bank in May of 1969—the alleged event which triggered the charge in this case. (App. 11, 17, 19).¹ Regardless of what that charge alleged, EEOC's laches now foreclose it from proving that Ms. Holland ever in fact applied for a job or that her charge was timely filed. Thus, the EEOC lacks the essential jurisdictional facts to support this suit. *United Air Lines v. Evans*, 431 U.S. 553 (1977); *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973).

Respectfully submitted,

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August 31, 1978

¹ "App." refers to the pages of the appendices to the petition for writ of certiorari.

CERTIFICATE OF SERVICE

I, Paul M. Thompson, Counsel for the Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served all parties required to be served by depositing three copies of the foregoing Petitioner's Reply Brief in Support of Petition for Writ of Certiorari in the United States Mail, first class postage prepaid, this 31st day of August, 1978, addressed to: The Solicitor General of the United States, Department of Justice, Washington, D.C. 20530; Abner W. Sibal, Esq., General Counsel and William H. Ng, Esq., Attorney, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20560; Douglas S. McDowell, Esq., Equal Employment Advisory Council, Suite 1250, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006; Hon. William K. Slate II, Clerk, United States Court of Appeals for the Fourth Circuit, Richmond, Virginia 23219.

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